

REMARKS

The Examiner has rejected the claims at issue for the reasons of record and restriction has been required between the following claims:

1. Group I, Claims 1-20, 23 and 28-30 drawn to a composition and method comprising a polymer system susceptible to degradation upon exposure to an ejaculate;
2. Group II, Claims 21-22 drawn to a method for delivering microbicides to an individual upon exposure to an ejaculate; and
3. Group III, Claims 24-27 drawn to various polymer systems.

Applicant is further required to elect a particular species from the polymer systems listed in claim 10.

In order to be fully responsive, Applicant hereby provisionally elects the Group I claims and the species of water soluble synthetic polymers from Group I. The claims readable on all elections are claims 1-20, 23 and 28-30 on page 2 of this Response. All such elections have been made with traverse.

Applicant respectfully asserts that as a whole, the restriction requirement parsing out the claims into three Groups is improper, and that some of the Groups are not independent or distinct or lack unity of invention. In fact, Applicant contends that the Examiner has failed to properly explain why any of the Claim Groups are patentability distinct in a way that forces restriction under PCT Rule 13.2. The Examiner alleges that the general inventive concept that would link these claims is "a polymer system susceptible to degradation upon exposure to an ejaculate," which is further not found to be a novel feature. Although the Examiner appears to have correctly identified the general inventive concept, she has incorrectly characterized the reference. Patent 5,617,877 ("877") does not in any way describe a polymer system that

degrades upon exposure to an ejaculate. The '877 patent describes a method of applying a gel that includes acidic buffering polymers that can control or maintain the pH of an area between approximately 3 and 5. In contrast to the methods of the present invention, the '877 patent does not teach the formation of polymers that degrade upon exposure of the acidic environment of an ejaculate. As such, Applicant contends that each Group necessarily relates to the others in a way that requires their prosecution as a whole, and to which is not an unnecessary burden on the Examiner. Applicant respectfully requests that the Examiner remove the restriction requirement and prosecute all three of the claim groupings together.

Applicant also provisionally selects the particular specie of polymer system as water soluble synthetic polymers for prosecution as required by the Examiner but Applicant makes this selection with traverse. Amended Claim 10 reads on this election. Applicants have listed a valid Markush grouping as allowed by MPEP 2173.05(h). Under MPEP 803.02:

If the members of the Markush group are sufficiently few in number or so closely related that a search and examination of the entire claim can be made without serious burden, the examiner must examine all the members of the Markush group in the claim on the merits, even though they may be directed to independent and distinct inventions. In such a case, the examiner will not follow the procedure described below and will not require provisional election of a single specie.

Applicant contends that such a situation exists in the current claims as the groups are not large and all of the members of each group are interrelated in a way that does not increase the Examiner's burden for searching. The species are all known polymer systems and in each instance the groupings are so related that the Examiner's search should not be burdensome. Therefore, Applicant respectfully contends that the Examiner's requirement for provisional election of a single specie of a particular polymer system is improper and respectfully requests that the Examiner remove this objection and prosecute the claims as listed in their entirety.

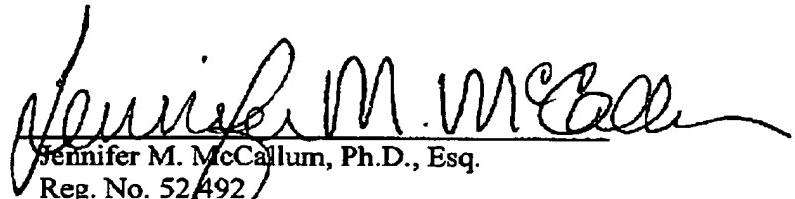
Concluding Remarks

In view of the above provisional elections, an Office Action on the merits is respectfully requested at an early time.

If the Examiner notes any further matters which would be expedited by a telephonic interview, he is requested to contact Dr. Jennifer M. McCallum at the telephone number listed below.

Respectfully Submitted,

9.2.09
Date



Jennifer M. McCallum, Ph.D., Esq.

Reg. No. 52492

The McCallum Law Firm, PC

685 Briggs Street

P.O. Box 929

Erie, CO 80516

Telephone: (303) 828-0655

Fax: (303) 828-2938

e-mail: administration@mccallumlaw.net